

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 155 w/CS Firearm Records

**SPONSOR(S):** Rep. Harrington

**TIED BILLS:** **IDEN./SIM. BILLS:**

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	12 Y, 3 N	Thomas	Havlicak
2)			
3)			
4)			
5)			

---

### SUMMARY ANALYSIS

Florida maintains very few records related to firearms. It does keep limited records relating to secondhand dealer and pawnbroker firearm transactions, concealed weapon licenses, criminal history checks, and those used by law enforcement in the investigation and prosecution of crimes.

The bill prohibits any state, regional, or local governmental entity from keeping, or causing to be kept, any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of such firearms. The bill applies the same prohibition against private persons and entities. The bill provides certain exemptions to the prohibition.

A violation of the prohibition is a third degree felony. The bill provides that a governmental entity, or their designee, may be fined up to \$5 million, if a list, record, or registry is compiled in violation of the prohibition and a court finds that the information was compiled with the knowledge of the management of the entity. The attorney general may bring a cause of action to pursue a fine against a governmental entity. The state attorney is charged with investigating complaints of criminal violations of the prohibition in their respective jurisdictions.

The bill does not appear to have a fiscal impact on state or local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

Florida maintains very few records related to firearms. Section 790.001(6), F.S., defines the term "firearm" to mean:

any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

Pursuant to s. 790.065, F.S., the Florida Department of Law Enforcement (FDLE) performs criminal history record checks through the National Crime Information Center (NCIC) of the Federal Bureau of Investigations (FBI) when a licensed importer, licensed manufacturer, licensed dealer, or licensed collector attempts to sell a firearm to another person. FDLE must destroy the record of the criminal history check within 48 hours after the day it delivers a response to the licensee's request. These requests are done by telephone and usually take only a few minutes.

Private persons and entities are generally free to maintain their business and personal records relating to firearms and firearm purchases. Federal firearm dealer regulations require firearm dealers to keep certain information relating to transactions<sup>1</sup>. As part of the National Firearms Act, certain types of firearms such as machine guns and short-barreled shotguns must be registered with the Federal Bureau of Alcohol, Tobacco, and Firearms.<sup>2</sup> The Florida Department of Agriculture and Consumer Affairs issues licenses to carry concealed weapons and firearms pursuant to s. 790.06, F.S.

In Attorney General Opinion 2001-51, issued on July 18, 2001, the Attorney General opined that local law enforcement authorities could submit confidential records of pawnbroker transactions, on a voluntary basis, to FDLE for inclusion in a statewide pawnbroker database which only is accessible by approved law enforcement officers. These confidential records are submitted by the pawnbroker, most often electronically, to local law enforcement agencies pursuant to s. 539.001, F.S., which regulates pawnbroker transactions. Secondhand dealers submit purchase transaction records in the same fashion. While the Attorney General's opinion concluded that records submitted to the statewide database would maintain their confidential status, this statewide database has never been created. A pilot project is operating wherein, rather than creating a statewide database, Florida law enforcement agencies access each other's databases through a switching network. The secondhand dealer and

<sup>1</sup> 18 U.S.C. 923; 27 C.F.R. 478.125; 27 C.F.R. 478.126; 27 C.F.R. 478.134.

<sup>2</sup> 26 U.S.C. 5861; 27 C.F.R. 479.101. The registration identifies the firearm, the date of registration and the identification and address of the person entitled to possess the firearm.

pawnbroker transaction records include transactions involving firearms used to secure a loan from pawnbrokers.

The bill provides legislative findings that:

- the right to keep and bear arms is guaranteed under the state and federal constitutions;
- a list, record, or registry of legally owned firearms or firearm owners is not a law enforcement tool and could be used to harass citizens who choose to own a firearm and could possibly be used by thieves;
- a list, record, or registry of legally owned firearms or firearm owners is not a tool for fighting terrorism and could be used as a means to profile and harass citizens who choose to bear firearms; and
- firearm owners whose names are on an illegal list, record, or registry deserve redress.

The bill provides that the Legislature intends to:

- protect the rights of individuals to bear arms; and
- protect the privacy rights of firearm owners.

The bill prohibits any state, regional, or local governmental entity from keeping, or causing to be kept, any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of such firearms. The bill applies the same prohibition against private entities.

The bill provides that electronic records of secondhand dealer and pawnbroker transactions relating to firearms may only be kept by secondhand dealers, pawnbrokers, or law enforcement agencies for thirty days.

A violation of the prohibition is a third degree felony punishable by up to five years in prison and by up to a \$5,000 fine<sup>3</sup>. The bill prohibits the use of public funds (except those funds used to provide an indigent person an attorney pursuant to their constitutional right to counsel) in the defense of any person charged with violating this section, unless the charges are dismissed or the person is found not guilty.

The bill provides that a governmental entity, or their designee, may be fined no more than \$5 million, if a list, record, or registry is compiled in violation of the prohibition and a court finds that the information was compiled with the knowledge of the management of the entity. This is a civil fine to be enforced by the attorney general. The state attorney is charged with investigating criminal complaints of violations of the prohibition in their jurisdiction. Violations must be vigorously prosecuted.

The bill provides certain exemptions to the prohibition. The exemptions are:

- firearms used in a crime, any person convicted of a crime, or records of a stolen firearm (however, these records must be destroyed within 30 days after the stolen firearm is recovered);
- federally required records by firearm dealers (however, these records may not be converted into any form of list, registry, or database);
- records related to the criminal history background check provisions of s. 790.065, F.S.;

---

<sup>3</sup> The bill does not provide a severity ranking for the new felony criminal penalty. Pursuant to s. 921.0013, F.S., unranked third degree felonies have a level 1 ranking.

- electronic copies of firearm records required to be kept by secondhand dealers pursuant to ch. 538, F.S., may be kept for thirty days after the purchase of the firearm. Electronic copies of firearm records required to be kept by pawnbrokers pursuant to ch. 539, F.S., may be kept until thirty days after the expiration of the loan secured by the firearm. Law enforcement agencies may keep electronic copies of firearm records received from secondhand dealers and pawnbrokers for thirty days from receipt of such records;
- FDLE records pertaining to criminal history record checks through the NCIC of the FBI to the extent required by federal law;
- records by insurers against theft or loss of firearms provided such list is not sold, commingled with records relating to other firearms, or transferred to another person or entity (however, the insurer must destroy these records within 60 days after the policy expires or the insured notifies the insurer that the insured no longer owns the firearm);
- a list of customers of a firearm dealer, provided the list does not disclose the particular firearms purchased (however, such list may not be sold, commingled with records relating to other firearms, or transferred to another person or entity);
- sales receipts by sellers of firearms or a person providing credit for the purchase of firearms (however, the receipts may not be used for the creation of a database for the registration of firearms);
- personal records maintained by the owner of firearms;
- records of a business which stores or acts as a selling agent for the lawful owner of firearms;
- membership lists of firearm owner organizations;
- records maintained by an employer or vendor of the firearms owned by its officers, employees, or agents if the firearms are used in the course of the employer's or vendor's business; and
- records maintained pursuant to s. 790.06, F.S., related to the issuance of licenses to carry concealed weapons or concealed firearms by the Department of Agriculture and Consumer Services (however, the Department may only keep such records on an individual who was a licensee within the prior two years).

#### C. SECTION DIRECTORY:

**Section 1:** Creates s. 790.335, F.S., prohibiting any person from keeping any list, record, or registry of privately owned firearms or owners of firearms; provides exceptions and penalties.

**Section 2:** Requires that any prohibited list of firearms or owners of firearms must be destroyed within 60 days after the bill becomes law.

**Section 3:** Provides that the bill will take effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any significant impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any significant impact on state expenditures. While it does create a new felony penalty which is unranked on the offense severity chart in s. 921.0013, F.S., third degree felonies rarely result in jail or prison time. The Criminal Justice Estimating Conference

routinely classifies new third degree felony penalties as having no fiscal impact or insignificant fiscal impact. The Conference will put this bill on its next agenda for consideration. No date has been set at this time for the next Conference meeting. See also additional fiscal comments in "D." below.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill appears to have an insignificant impact on local governments' revenues. See also additional fiscal comments in "D." below.

2. Expenditures:

The bill does not appear to have any impact on local governments' expenditures. While it does create a new felony penalty, third degree felonies rarely result in jail or prison time. See also additional fiscal comments in "D." below.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have any significant economic impact on the private sector. The bill may impact the recordkeeping of certain businesses, but the exceptions provided in the bill appear to provide enough flexibility for businesses to continue their economic activity in this area.

**D. FISCAL COMMENTS:**

The bill provides for a possible fine to be assessed against governmental entity violators of no more than \$5 million. In addition, any third degree felony conviction under the bill's provisions could result in a fine of up to \$5,000. Pursuant to s. 142.01, F.S., as of July 1, 2004, fines collected under the penal laws of the state are distributed to the Clerk of Courts of the respective county where the prosecution occurred.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

The application of the records prohibition on private persons and entities arguably may violate First Amendment free speech rights.

**B. RULE-MAKING AUTHORITY:**

The bill does not create the need for rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

A strike-everything amendment was adopted in the Judiciary Committee on November 19, 2003. The analysis above reflects the substance of the amendment which is now the Committee Substitute for the bill. The differences between the Committee Substitute and the bill as filed are:

- Ensures that pawnbrokers and secondhand dealers may still electronically share firearm transaction records with appropriate law enforcement agencies;
- Broadens an exception in the bill to ensure that law enforcement and prosecutors may keep necessary information regarding firearms involved in the commission of any crime, not just a crime of violence;
- Removes the provision which makes public employees subject to immediate dismissal for certain violations;
- Clarifies the differences between the criminal and civil penalties in the bill;
- Removes the "WHEREAS" clauses from the bill; and
- Corrects certain bill drafting issues, including numbering and parallel construction.